STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

P.O. Box 45010, Olympia, Washington 98504-5010

April 29, 2004

Dennis Smith, Director
Center for Medicaid and State Operations
Centers for Medicare and Medicaid Services
Mail Stop C5-21-17
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Mr. Smith:

By your letter of February 13, 2004, the Centers for Medicare and Medicaid Services (CMS), notified the State of Washington of the Department of Health and Human Services' (HHS or the Department) approval of the state's application for a Medicaid demonstration waiver, Project No. 11-W-00180/0. HHS, however, indicated that it will withhold approval of the AI/AN exemption until we submit an acceptable explanation of how the exemption is consistent with the strict scrutiny test applicable to race, color, or national origin classifications under Title VI of the Civil Rights Act of 1964 (Title VI).

As explained in the enclosed document, the premium exemption does not violate Title VI of the Civil Rights Act. Under the Supreme Court's seminal decision in Morton v. Mancari, 417 U.S. 535 (1974), Federal legislation which provides preferences to Indians is not subject to strict scrutiny, and will be upheld when rationally related to the Federal government's unique trust obligations to Indians. Because Washington's proposed premium exemption furthers the Federal government's unique trust responsibility to provide health care to Indians, it is not subject to strict scrutiny under Mancari and does not violate Title VI. In this regard, it is no different than the hundreds of other Federal Indian preference programs currently on the books.

The current request would enhance access to health care for many needy AI/AN children in our state, and is critical to ensure that these children in fact receive health care. For these reasons, the State of Washington requests the Secretary to approve the premium exemption for American Indian and Alaskan Native children as part of demonstration waiver Project No. 11-W-00180/0.

We are requesting a timely response to our letter, as we are going to be implementing our waiver approved premiums for CN optional children on July 1, 2004. Unless directed otherwise, we are going to implement our requested AI/AN exemption on that date.

Sincerely,

DENNIS BRADDOCK
Secretary

Enclosure

Cc: Governor Locke
Tommy Thompson
Steven Smith
Douglas Porter
Liz Dunbar
Marty Brown
Wolfgang Opitz
Ree Sailors
Jean Sheil
Richard Fenton
Julie Harkins
Karen O'Connor
Carol Crimi

INTRODUCTION

By letter of February 13, 2004, Dennis Smith, Acting Administrator for the Centers for Medicare and Medicaid Services (CMS), notified the State of Washington of the Department of Health and Human Services' (HHS or the Department) approval of the State's application for a Section 1115 Medicaid demonstration waiver, Project No. 11-W-00180/0. HHS, however, withheld approval of that portion of the waiver that would exempt American Indian and Alaska Native[1] (AI/AN) children from a premium payment requirement pending explanation of the exemption.

The purpose of this Memorandum is to explain the basis for the AI/AN premium exemption and to respond to the Department's request that we explain how the exemption is consistent with the strict scrutiny test applicable to race, color, or national origin classifications under Title VI of the Civil Rights Act of 1964 (Title VI). Such an explanation is also required by the Special Terms and Conditions for the demonstration waiver.

We explain below why the strict scrutiny test is not applicable here and that Washington's decision to exempt AI/AN children from premium requirements under the demonstration project is justified for the following reasons:

- It complies with the CMS policy that Sec. 1115 demonstration projects shall not impose cost-sharing on AI/AN children.
- It is consistent with the SCHIP regulatory prohibition against charging premiums to AI/AN children.
- It furthers the United States' trust responsibility for Indian health.
- It satisfies the "rational basis" test employed by the Supreme Court for analysis of programs that provide special treatment for Indians as a political rather than a racial classification.
- It was developed in consultation with the federally-recognized Indian tribes in Washington consistent with CMS's Indian consultation requirements.

I. CMS POLICY AND THE SCHIP REGULATIONS BAR COST-SHARING FOR AI/AN CHILDREN

A. CMS prohibits cost-sharing for American Indian and Alaska Native Children in Sec. 1115 Demonstration Projects.

The withholding of Departmental approval of the AI/AN premium exemption in the State's waiver application was perplexing, since CMS directed over three years ago that it would

[1] The term "American Indians and Alaska Natives" is used to describe the indigenous peoples of the United States. The indigenous peoples in Alaska are termed "Alaska Natives", while tribal people in the Lower 48 States are referred to as "American Indians." Often the short-hand term "Indians" is used to refer collectively to American Indians and Alaska Natives.

When promulgating this regulation, CMS explained the basis for it as follows: "...[T]itle XXI [of the Social Security Act] includes provisions to ensure enrollment and access to health care services for American Indian and Alaska Native (AI/AN) children. The proposed regulation incorporated our interpretation that in light of the unique Federal relationship with tribal governments, cost-sharing requirements for individuals who are members of a Federally recognized tribe are not consistent with this statutory requirement." 66 FED. REG. 2492 (Jan. 11, 2001).

The primary Title XXI provision to which this explanation refers is Sec. 2102(b)(3)(D). There Congress directed that a State's child health plan include a description of the procedures that will be used to ensure that the plan targets low-income Indian children. To implement this assurance of access requirement, CMS proscribed cost-sharing for this SCHIP population. In a 1999 letter to state health officials, CMS explained: "Because cost sharing poses a unique financial barrier to care for AI/AN children, States that impose cost sharing on AI/AN children are not in compliance with the access provision of section 2102(b)(3)(D)."[6]

If CMS were to depart from its November 3, 2000 announced policy regarding Sec. 1115 demonstration project and deny Washington's AI/AN premium exemption, the State would be put in the position of having to charge premiums for AI/AN children under the Section 1115 project, while being prevented from charging premiums for AI/AN children enrolled in SCHIP. This would produce the anomalous result that Indian children from families with incomes *below* 200 percent of the federal poverty level (FPL) -- those covered by the Section 1115 project -- would be charged a premium, while SCHIP Indian children from families with incomes *above* 200 percent of the FPL would be charged no premium. Such an outcome is irrational and unsupportable.

The basis for Washington's premium exemption is in all respects identical to the basis for SCHIP cost-sharing proscription and the prohibition on such cost-sharing in Sec. 1115 demonstration projects. Thus, all three are either in conformity with Title VI of the Civil Rights Act or are in violation of that law. As we demonstrated in the next Section, however, neither the Washington nor the CMS cost-sharing exemptions for AI/AN children violate Title VI.

II. THE PROPOSED WAIVER EXEMPTION DOES NOT VIOLATE TITLE VI OF THE CIVIL RIGHTS ACT

The Department has asked us to justify the AI/AN premium exemption under the "strict scrutiny" test applicable to race, color or national origin classifications under Title VI of the Civil Rights Act. That law provides that no person can be (1) excluded from, (2) denied the

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[6] Letter to state health officials from Rachel Block, Deputy Director, Center for Medicaid and State Operations, dated October 6, 1999.

benefits of, or (3) subjected to discrimination in any federally financed program if the basis for that unequal treatment is race, color, or national origin.[7] Our review of case law -- commencing with the landmark 1974 Supreme Court decision in Morton v. Mancari, 417 U.S. 535 (1974), reveals that the "rational basis" test rather than "strict scrutiny" is to be applied in the case of *Indian* classifications.

While the Supreme Court's civil rights jurisprudence has generally applied strict scrutiny when reviewing classifications based on race, color or national origin, in Mancari the Court found that test inapplicable when reviewing an Indian employment preference law. In that case, the Court held that due to the unique historic and political relationship between the United States and the Indian tribes, legislation that singles out Indians for special treatment is *political* rather than *racial* in nature, and will stand if it is rationally related to the United States' unique federal trust responsibility to the Indians. As a result, under the Mancari doctrine, "ordinary rational basis scrutiny applies to Indian classifications just as it does to other non-suspect classifications under equal protection analysis." Narragansett Indian Tribe v. National Indian Gaming Comm'n, 158 F.3d 1335, 1340 (D.C. Cir. 1998).

Washington's proposed AI/AN premium exemption meets the Mancari test because it is based on the *political* status of AI/AN children in the State who would be eligible for enrollment under the State's Sec. 1115 demonstration project, not on the racial status of these children. Its objective is fully consistent with the hundreds of other federal programs which permissibly single out American Indians and Alaska Natives for special or preferential treatment in furtherance of the Federal government's trust responsibility to Indians as defined by the Supreme Court in Mancari.

A. Under Morton v. Mancari, Federal legislation that singles out Indians for preferential treatment is not subject to strict scrutiny and will pass constitutional muster if it is rationally related to the government's unique trust responsibility to Indians.

In Morton v. Mancari, 417 U.S. 535 (1974), non-Indian employees of the Bureau of Indian Affairs challenged a statutory hiring preference for qualified Indians. The Court found that the preference was granted to Indians as a *political* classification rather than a racial one. In that context, the Court said the appropriate analysis to apply was not strict scrutiny, but rather the "rational basis" test -- that is, was the Indian hiring preference rationally related to the fulfillment of Congress' unique obligation toward the Indians? The Court determined that it was. The preference for Indian employment at the BIA was intended to give Indians greater participation

[7] The Supreme Court has interpreted Title VI to allow racial and ethnic classifications only if those classifications are permissible under the Equal Protection Clause. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 287 (1978). In this regard, the Court has also stated that "all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests." Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995).

in their own self-government, to further the United States' trust obligation to Indians, and to reduce the negative effects of non-Indian administration of Indian tribal life. Id. at 553-55.

The Mancari Court recognized that the hiring preference ordered by Congress was rooted in "the unique legal status of Indian tribes under federal law and upon the plenary power of Congress, based on a history of treaties and the assumption of a 'guardian-ward' status, to legislate on behalf of federally recognized Indian tribes." Id. at 551. Accordingly, the Court determined that reviewing special benefits and protections for Indians under a strict scrutiny analysis would be tantamount to undermining the sovereign status of the tribes.

As the Court recognized, the United States has enacted a host of laws intended to provide special benefits and protections for Indians in furtherance of its trust responsibilities to the Indians:

> "Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized." Mancari at 552-53.

Recognizing the United States' unique relationship with and responsibility to the Indians, the Court noted that "[o]n numerous occasions [it] specifically has upheld legislation that singles out Indians for particular and special treatment." Id. at 554-55. Consequently, the Court concluded that:

> "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed. Here, where the preference is reasonable and rationally designed to further Indian self-governance, we cannot say that Congress' classification violates [the equal protection aspect of] due process." Id. at 555.

Once the link between special treatment for Indians as a political class and the Federal government's unique obligation toward Indians is established, a preference for Indians passes constitutional muster under the rational basis test.

The Indian hiring preference sanctioned by the Court in Mancari is only one of the many activities the Court has held are rationally related to the United States' unique obligation toward Indians. The Court has upheld a number of other activities singling out Indians for special or preferential treatment, *e.g.*, the right of for-profit Indian businesses to be exempt from state taxation, Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463, 479-80 (1976); the right of taking fish, Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 673 n.20 (1979); and the application of federal law instead of state law to Indians charged with on-reservation crimes, United States v. Antelope, 430 U.S. 641, 645-47 (1977). The Court in Antelope explained its decisions in the following way:

"The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, *is not based upon impermissible racial classifications*. Quite the contrary, classifications singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians." Antelope, 430 U.S. at 645 (emphasis added).

We are aware of no subsequent Supreme Court decision that has questioned the continued validity of the Mancari decision where the Indian preference was linked to Congress' unique obligation to Indians.[8]

B. The Federal government has a trust obligation for Indian health care.

One of the Federal government's unique obligations to Indians is the provision of health care. This obligation is acknowledged in numerous treaties with Indian tribes, and a standing authorization of appropriations for Indian health has been codified in Federal law for more than 80 years. 25 U.S.C. §13. With the enactment of the Indian Health Care Improvement Act in 1976, Congress reiterated its obligation to operate a health care network for Indian people and expressed its obligation in the following terms:

"Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people." 25 U.S.C. § 1601(a).

"The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy." 25 U.S.C. § 1602(a).[9]

This unique obligation to provide Indians with quality health care has been recognized by the courts as well. In Preston v. Heckler, 734 F.2d 1359 (9th Cir. 1984), for example, the United States Court of Appeals for the Ninth Circuit noted that in setting separate standards for Indians, the Secretary "must of course keep in mind the strong federal policy of ensuring that health

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[8] Indian Preference provisions are not limited to the BIA, and have been applied in a variety of federal programs for the benefit of Indians. Section 7 of the Indian Self Determination Act, for example, establishes a broad federal policy of providing hiring, training and contracting preferences for Indians in contracts or grants with Indian organizations across all federal agencies. 25 U.S.C. §450e(b). Indian preference provisions are also found in other statutes. *See, e.g.*, 42 U.S.C. § 9839(h) (establishing an Indian hiring preference at American Indian Programs Branch of Head Start Bureau); 20 U.S.C. § 3423c(c) (establishing an Indian employment preference in the Office of Indian Education in the Department of Education). The Mancari Court's rational basis rule for such Indian preference provisions has been consistently upheld by the lower courts since it was announced by the Court. See, e.g., Preston v. Heckler, 734 F.2d 1359 (9th Cir. 1984) (upholding the Indian Health Service's Indian preference provisions under Mancari).

[9] For purposes of this law, Indians include Alaskan Natives. *See* 25 U.S.C. §1603(c) and (d).

services provided to Indians are of the highest quality." Id. (citing the Indian Health Care Improvement Act).

In addition to setting out a comprehensive framework for delivery of health care to Indian people, the 1976 Indian Health Care Improvement Act allowed Federally-funded Indian health facilities to collect reimbursements from Medicare and Medicaid when they serve patients enrolled in those programs. 42 USC §1395qq; §1396j. In so doing, Congress departed from the general policy that Federal health care providers are not eligible for Medicare and Medicaid payments. Making Indian health care facilities Medicare and Medicaid eligible was a means for providing additional revenues to carry out the United States' trust obligation for Indian health.

Congress acknowledges the Federal trust responsibility for Indian health on a continuing basis through annual appropriations to the Department of Health and Human Services for the operation of Indian Health Service programs. In FY2004, a total of $2.9 billion was supplied for provision of health services and health facility needs in Indian Country. This budget was supplemented by some $598 million collected by Indian health programs from Medicare, Medicaid and other third-party insurance sources. In addition, Congress has provided annual appropriations specifically to target diabetes among Indian people, as that disease has reached epidemic proportions among this segment of the American population. In FY2004, $150 million was appropriated for Indian diabetes programs.[10]

Congress targets Federal revenue to Indian health providers and to programs designed to encourage Indian people to enter the health professions, all in recognition of the United States' responsibility for Indian health. The Indian Health Care Improvement Act is replete with grant programs for which only Indian health care providers are eligible and programs that provide a preference for applicants who are Indian. See generally Titles I, II, III, V and VII of the Indian Health Care Improvement Act, 25 USC §1601 *et seq.*

In addition to the Bureau of Indian Affairs and Indian Health Service programs designed exclusively for Indians or that include Indian preference elements, other Federal agencies also administer federal laws that provide special treatment for Indians. Among these are Indian housing programs operated by the Department of Housing and Urban Development; a Department of Defense set-aside for subcontracting with entities that are 51% Indian-owned; Department of Education-administered programs under the Indian Education Act and other Federal aid to education laws; and eligibility for small business loan guarantees for Indian-owned businesses from the Small Business Administration.

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[10] Nonetheless, funding for Indian health continues to fall woefully short of need, and increases in annual appropriations to IHS do not keep up with the medical inflation rate. In a recently-released study, the U.S. Commission on Civil Rights found that IHS spends about $1,600 per capita for Indian health on an annual basis; this is roughly 50 percent below the per person spending by public and private health insurance plans. *See* U.S. Commission on Civil Rights, Office of Civil Rights Evaluation, *"A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country,"* Staff Draft, July 16, 2003, at 45. IHS appropriations for medical care in FY2003 scored between 68% and 49% lower than the per-capita amount projected for every other federally-funded health program (Medicare, Veterans, Medicaid, federal prisoners, and federal employees). Id. at 46 (Figure 3.2).

C. Washington's premium exemption is intended to further the Federal government's unique obligation to ensure adequate health care for needy AI/AN children in Washington.

As previously discussed, Washington's premium exemption for AI/AN children is consistent with CMS's own federal policy that it will not approve Section 1115 demonstration projects that provide for cost sharing by AI/AN children. It is also consistent with, and intended to further, the federal government's unique responsibility to provide health care to Indians.

While it is the State of Washington that seeks permission for the premium exemption, final authority to approve it rests with CMS. Clearly the agency has the authority to grant the waiver as an exercise of the United States' trust responsibility to Indians. In seeking the exemption, the State is not only complying with the CMS policy not to impose cost-sharing on AI/ANs, it is also furthering the Federal government's unique obligation to provide adequate health care to Indians.

The Supreme Court has made clear that state action which acts to further or implement one of the federal government's unique trust responsibilities to the Indians is subject to the same rational basis test as purely federal action. *See* Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, 439 U.S. 463, 500-501 (1979) (holding that while states do not have the same unique trust relationship with the Indians as the federal government, state action which implements federal law singling out Indians for special treatment is not constitutionally suspect). As the United States Court of Appeals for the Fifth Circuit has recognized, "states may exercise the federal trust power pursuant to express Congressional authorization." Peyote Way Church of God, Inc. v. Thornburgh, 922 F.2d 1210, 1218 (5th Cir. 1991) (upholding a state law exempting members of the Native American Church from laws prohibiting the possession of peyote). States may even exercise the Federal trust power in the absence of express Congressional authorization if it is consistent with the intent announced by Congress. Id.; *see also, e.g.*, Livingston v. Ewing, 601 F.2d 1110 (10th Cir. 1979) (upholding the Museum of New Mexico's policy of permitting only Indians to sell their handmade goods in an area of a state historic building controlled by the museum under the Federal Indian employment preference provisions in 42 U.S.C. § 2000(e)-2(i)).

Based on the congressional findings and declarations in the Indian Health Care Improvement Act and elsewhere, it is beyond dispute that Federal approval of Washington's AI/AN premium exception would rationally relate to the government's "unique obligation toward the Indians" in the area of health care. And, as noted above in our discussion of the November 3, 2000, CMS directive and CMS' justification for a similar exemption under the SCHIP program, CMS has acknowledged that relationship. Moreover, the Federal government's unique responsibilities to Indians in the area of health care have been recognized by the courts. By exempting needy AI/AN children from paying health care premiums, the proposed exemption is rationally related to the federal government's unique obligation to assure access to health care for American Indians and Alaskan Natives. As discussed in the next section, it is also consistent

with the government-to-government relationship between the Federal government, the State of Washington and the Indians in the State.

D. Washington's premium exemption is consistent with the government-to-government relationship between Indian tribes and the Federal government, and between Washington and Indian tribes in the State.

Washington requested the waiver exemption after a series of consultations it held with the Indian tribes in the State as required by CMS policy. By a letter dated July 17, 2001, CMS directed each State Medicaid Director to consult with Tribes on all Medicaid Section 1115, 1915(b) and 1915(c) waiver proposals and waiver renewals prior to submitting them to CMS. In its letter, CMS recognized the unique government-to-government relationship between United States and Indian tribes:

> "As set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions, it has long been recognized that the United States has a unique relationship with Tribal Governments. This government-to-government relationship recognizes the right of Tribes to tribal sovereignty, self-government and self-determination." Letter to State Medicaid Director from Penny R. Thompson, Acting Director, CMS, July 17, 2001.

According to CMS, "[a]ccess to the decision-making process regarding the Medicaid and SCHIP programs is especially critical for Tribes for cultural, treaty and statutory reasons." Id.[11]

Washington State has independently recognized the political status of American Indian tribes in various accords between the State and the tribes. The first is the 1989 Centennial Accord between the State and the recognized tribes in the State. That accord provides a framework for implementing a government-to-government relationship between the State and the tribes. The Preamble and Guiding Principles of the Centennial Accord reflect this government-to-government relationship:

> "This ACCORD dated August 4, 1989, is executed between the federally recognized Indian tribes of Washington signatory to this ACCORD and the State of Washington, through its governor, in order to better achieve mutual goals through an improved relationship between their sovereign governments. This ACCORD provides a framework for that government-to-government relationship and implementation procedures to assure execution of that relationship.
>
> Each Party to this ACCORD respects the sovereignty of the other. The respective sovereignty of the state and each federally recognized tribe provide paramount authority

[11] The Federal Government has repeatedly recognized the importance of this government-to-government relationship with Tribes as well. In order to further this relationship, President Clinton issued several executive orders directing federal agencies to consult with tribes whenever they are considering new federal standards. *See, e.g.,* Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," November 6, 2000. This executive order was affirmed by the George W. Bush Administration. See Letter to Honorable Frank Pallone, Jr. from Alberto R. Gonzales, Counsel to the President, June 19, 2002 (Exhibit 2).

for that party to exist and to govern. The parties share in their relationship particular respect for the values and culture represented by tribal governments. Further, the parties share a desire for a complete accord between the State of Washington and the federally recognized tribes in Washington reflecting a full government-to-government relationship and will work with all elements of state and tribal governments to achieve such an accord."

The Centennial Accord was followed in 1999 by the New Millennium Agreement between the State and the tribes. One of the objectives of that agreement was the "[s]trengthening [of] our commitment to government-to-government relationships and working to increase the understanding of the tribes' legal and political status as governments." The New Millennium Accord contained various commitments of the parties aimed at institutionalizing the government-to-government relationships both among the tribes and between the tribes and the state.

In May of 2000, the Washington State Tribal-State Workgroup produced the Government-To-Government Implementation Guidelines to further develop protocols and processes to better define how to implement the government-to-government relationship between the state and the federally recognized American Indian tribes within the state.

In response to the call for a consultation process contained in these documents and in the federal CMS's consultation directive, the State met with the tribes on August 24, 2001, to discuss the waiver application. As a result of those consultations, the State agreed with the tribes to seek an AI/AN premium exemption. It is hard to conceive of a clearer indication that the exemption is based on political, rather than racial status—the AI/AN premium exemption was included in the State's waiver as a direct result of inter-governmental discussions among sovereign political entities.

IV. CONCLUSION

CMS should approve the State's request for the AI/AN premium exemption as it is consistent with CMS's own directive, the SCHIP regulations, and the Federal government's trust responsibility to provide health care to Indians, and was based on the political relationship between the Federal government, the State of Washington and the Tribes in the state.

The premium exemption does not violate Title VI of the Civil Rights Act. Under the Supreme Court's seminal decision in Morton v. Mancari, 417 U.S. 535 (1974), Federal legislation which provides preferences to Indians is not subject to strict scrutiny, and will be upheld when rationally related to the Federal government's unique trust obligations to Indians. Because Washington's proposed premium exemption furthers the Federal government's unique trust responsibility to provide health care to Indians, it is not subject to strict scrutiny under Mancari and does not violate Title VI. In this regard, it is no different than the hundreds of other Federal Indian preference programs currently on the books.

The current request would lower barriers to accessing health care for many needy AI/AN children in the State of Washington, and is critical to ensure that these children in fact receive health care. For these reasons, the State of Washington requests the Secretary to approve the premium exemption for American Indian and Alaskan Native children as part of demonstration waiver Project No. 11-W-00180/0.